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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN - 4 1997

In the Matters of)
1993 Annual Access Tariff Filings)
GSF Order Compliance Filings)
1994 Annual Access Tariff Filings)
1995 Annual Access Tariff Filings)
1996 Annual Access Tariff Filings)

Federal Communications Commission
Office of Secretary

CC Docket No. 93-193
Phase I, Part 2

CC Docket No. 94-65

OPPOSITION OF AT&T CORP.

Pursuant to the Commission's Public Notice,
DA 97-1137, released May 30, 1997, AT&T Corp. ("AT&T")
hereby opposes Bell Atlantic's Petition for Clarification of
the Commission's April 17, 1997 Order in CC Docket
No. 93-193, which seeks to legitimize the impermissible
upward exogenous adjustments which Bell Atlantic made in its
Amended 1997 Tariff Review Plan ("TRP") filed in response to
that ruling's requirement that Bell Atlantic refund past
overcharges to customers.¹

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¹ 1993 Annual Access Tariff Filing etc., CC Docket
No. 93-193, Phase I, Part 2 and CC Docket No. 94-65,
Memorandum Opinion and Order, FCC 97-139, released
April 17, 1997, para. 38 ("April 17 Order").

The April 17 Order resolved several of the issues designated for investigation in the 1993 Access Order, as well as issues raised by the 1994, 1995 and 1996 annual access filings that were made subject to that investigation and ordered Bell Atlantic, among other local exchange carriers, to refund overcharges to customers.² As AT&T showed in its May 19, 1997 comments addressed to Bell Atlantic's Amended 1997 TRP, Bell Atlantic did not follow the prescribed refund directives established in the Commission's April 17 Order and, among other errors, sought impermissible upward exogenous adjustments in various baskets that would have more than offset the refund it was required to make by reducing the price cap index ("PCI") of the Common Line basket.

² Commencing in 1993, Bell Atlantic failed to include its End User Common Line ("EUCL") revenues from its total common line basket revenue for purposes of allocating sharing among their price cap baskets. In a series of separate orders, the Commission suspended Bell Atlantic's annual filings, made them subject to the CC Docket 93-193 investigation and imposed accounting orders. In the April 17 Order, the Commission affirmed that "[t]o exclude EUCL revenues from the common line basket distorts the use of revenues as a proxy for costs because total revenues would not be used." Therefore, it rejected "Bell Atlantic's contention that EUCL revenues may be excluded for purposes of allocating sharing amounts." Id., para. 38. Accordingly, the Commission concluded that Bell Atlantic in its 1993, 1994, 1995 and 1996 annual access tariff filings had incorrectly allocated sharing allocations among the price cap baskets, and prescribed a precise methodology to effectuate its refund liability.

Bell Atlantic now asks the Commission to endorse the procedure it used, claiming that the upward exogenous adjustments are consistent with the price cap rules and that the Commission's one-sided procedure would provide a windfall to customers. To the contrary, as shown below, Bell Atlantic's contentions are seriously flawed, both procedurally and substantively, and the Commission should therefore deny its petition and require Bell Atlantic to revise its Amended TRP to conform to the April 17 Order.

The Commission's price cap rules specifically limit "exogenous cost changes to those cost changes that the Commission shall permit or require by rule, rule waiver, or declaratory ruling." See 47 C.F.R. Section 61.45(d). In the April 17 Order, the Commission ordered Bell Atlantic to refund to its customers all amounts, plus interest, collected as a result of overcharges incurred during the course of the CC Docket 93-193 investigation.³ The procedure that the Commission established in Section V of the April 17 Order to compute the refund obligation allows no other outcome but a *downward* exogenous adjustment. Notwithstanding this fact, Bell Atlantic computed as

³ The Commission required that this refund be included in the 1997 annual access filing to become effective on July 1, 1997 as a one-time exogenous cost.

exogenous adjustments amounts that it believes its customers "owe" to Bell Atlantic. Thus, while Bell Atlantic computes its refund liability as a one-time exogenous reduction in its July 1, 1997 Common Line basket PCI of \$40.9 million, it also claims one-time exogenous cost increases of \$15.3 million, \$28.6 million and \$3.1 million, respectively, in the PCIs of the Traffic Sensitive, Trunking and Interexchange baskets.

Even assuming that Bell Atlantic's contentions as to the appropriateness of reflecting upward exogenous adjustments had merit (which they do not), the fact remains that the April 17 Order explicitly refused to allow such adjustments, and the Commission has not adopted any decision or rule that would permit or require Bell Atlantic to make its proposed upward exogenous adjustment. Thus, Bell Atlantic's petition for "clarification" is, in fact, a request for exogenous treatment not otherwise allowed by the Commission's rules or orders. Bell Atlantic's request for an upward exogenous adjustment, in these circumstances, must be handled, if at all, in a rulemaking or rule waiver proceeding, in accordance with Section 61.45(d).⁴

⁴ See Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, First Report and Order, 77 R.R.2d 783, paras. 312-318 (1995).

In all events, Bell Atlantic's petition is premised on the untenable notion that recalculating all the PCIs would simply be reestablishing the *status quo* if Bell Atlantic had originally computed its sharing distribution correctly in the first instance. The fact is, however, that because of intertemporal inconsistencies and changes in the mix of services that customers order, there is no assurance that ratepayers that were shortchanged by Bell Atlantic's past underallocation of sharing to the Common Line basket would be made whole.

Moreover, Bell Atlantic took a meritless position by deliberately excluding EUCL revenues in calculating its sharing distribution for several years, and it should not now be permitted to impose unwarranted rate increases on customers -- which is what the upward exogenous adjustment would do. Indeed, if Bell Atlantic has undercharged some customers due to its incorrect sharing allocations from 1993 to 1996, it was a voluntary business decision on its part and Bell Atlantic cannot now claim that customers "owe" it a refund. The Commission rejected a similar attempt by carriers to offset refund obligations by asserted

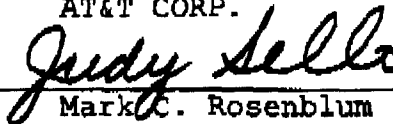
underpricing in other baskets in the 800 Data Access Tariff Order⁵ and it should do so here.

Wherefore, the Commission should reject Bell Atlantic's unjustified claims for upward exogenous adjustments not contemplated by the April 17 Order nor the price cap rules. In addition, the Commission should require Bell Atlantic to take the remedial actions noted in AT&T's Comments, filed May 19, 1997, on Bell Atlantic's Amended 1997 TRP.

Respectfully submitted,

AT&T CORP.

By



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June 4, 1997

⁵ 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Service, CC Docket Nos. 93-129 and 86-10, Order on Reconsideration, FCC 97-135, released April 14, 1997, paras. 13-17.

CERTIFICATE OF SERVICE

I, Viola J. Carlone, do hereby certify that on this 4th day of June, 1997, a copy of the foregoing "Opposition of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed below.

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